IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

RSA.No. 822 of 2007()

AGAINST THE ORDER DATED 09/02/2007 IN AS 15 2004 AND
AS.14/2004 of SUB COURT,THODUPUZHA
OS.42/1997 of MUNI-MAGI.COURT,THODUPUZHA

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: APPELLANTS/RESPONDENTS 1 TO 3/PLAINTIFFS

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1. SCARIA, AGED 77 YEARS, S/O.THOMMAN,
KANATTU HOUSE, THALAYANADU KARA,
ALAKODE VILLAGE.

2. THOMAS, AGED 43 YEARS, S/O.SCARIA,
KANATTU HOUSE, THALAYANADU KARA,
ALAKODE VILLAGE.

3. SAJU, AGED 37 YEARS, S/O.SCARIA,
KANATTU HOUSE, THALAYANADU KARA,
ALAKODE VILLAGE.

BY ADV. SRI.K.K.CHANDRAN PILLAI
SRI.A.S.SAJUSH PAUL

RESPONDENTS: APPELLANTS/DEFENDANTS

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1. THE ALAKODE GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
PANCHAYATH OFFICE, ALAKODE P.O.
ALAKODE VILLAGE.

2. SEBASTIAN, S/O.DEVASSIA,
THENGUMPILLIL HOUSE, SANKARAPPALLY KARA,
ALAKODE VILLAGE, THODUPUZHA TALUK.

3. DEVASSIA, S/O.DEVASSIA, CHITTATTIL
HOUSE, SANKARAPPALLY KARA, ALAKODE
VILLAGE, THODUPUZHA TALUK.

4. BHASKARAN, S/O.NARAYANAN, VALLACHALIL

HOUSE, SANKARAPPALLY KARA, ALAKODE VILLAGE, THODUPUZHA TALUK.

5. JOSE GEORGE, PALLIPARAMBIL HOUSE, SANKARAPPALLY KARA, ALAKKODE VILLAGE.

6. TOM FRANCIS, S/O.FRANCIS, AAMIKKATTU HOUSE, SANKARAPPALY KARA, ALAKODE VILLAGE, THODUPUZHA TALUK.

7. GEORGE, S/O.DEVASSIA, THENGUMPILLIL HOUSE, SANKARAPPALLY KARA, ALAKODE VILLAGE, THODUPUZHA TALUK.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 07/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

R.S.A.No.822 of 2007

Dated, this the 7th day of December,2007

JUDGMENT

Plaintiffs in O.S.No.42/1997 on the file of Munsiff Court, Thodupuzha are the appellants. First respondent is first defendant Panchayat and respondents 2 to 7 are additional defendants who got themselves impleaded. Appellants instituted the suit seeking a decree for injunction restraining first respondent Panchayat from trespassing into the plaint schedule property or carrying out any work therein. It is contended that plaint schedule property belongs to appellants under Exts.A1 to A3 will, sale deed and gift deed and they are in absolute possession and enjoyment of the property and Malankara Thalayanadu Panchayat road passes on the eastern side of the property of third appellant and in 1981 first appellant constructed a motorable road through his property with a

width of 10 feet from the eastern panchayat road and on the request of Mary Sebastian Thengumpillil who owns property on the northern side of the property of first plaintiff, road was extended by 80 metres into her property and it was further extended at the request of Srattel Antony upto his house on the south and first appellant put up an iron gate at the eastern side of plaint schedule property and in 1981 the road has got a length of 300 metres from Malankara-Thalayanad Panchayat upto the property of Mary Sebastian on the south and is described as the plaint A schedule property. Portion of the road having a length of 100 metres throughout the property of first appellant is described as plaint B schedule property. Contending that the road is being maintained by appellants periodically and first respondent has no right to carry out any work and alleging that on 8.1.1995, inhabitants of one lakh housing colony which is situated on the eastern side of the house of appellant removed the old gate installed on the

eastern end of the road and police registered a case and first respondent has no right to carry out any repair work in the road and suit was filed. First respondent resisted the suit contending that Malankara Thalayanad Panchayat road passes close to the properties of appellant and first appellant and others wanted to construct a road starting from Malankara Thalayanadu ending at the banks of Kanjar-Thodupuzha river and for that purpose respective property owners through whose property the road passes surrendered portions of the property and first appellant subsequently transferred property to appellants 2 and 3 and the property of Mary Sebastian lies on the south of that property and on the southern side of the properties lies the property acquired for MVIP which extends upto Kanjar-Thodupuzha river and for constructing the said road the beneficiaries dedicated the required land and collected a common fund and constructed and completed the road in 1965 and later in 1968 the road namely

Manjappara-Sankarappilli road having a length of one kilometer was handed over to Alakkode Panchayat by the land owners and Panchayat took over the road in the year 1968 and since then the upkeep and maintenance are being carried out by the Panchayat and the register of panchayat reveals that the road was taken up by the Panchayat in 1968 and after resurvey in Alakkode village the disputed road was shown as a public road and resurvey has become final and in such circumstance appellant is not entitled to the decree sought for.

2. Additional respondents, who got themselves impleaded, filed a statement reiterating the contentions raised by the panchayat. According to them public had constructed the road 30 years back through the properties dedicated by the respective owners and it was constructed as a public road for the use of the public at large and beginning portion of the road passes through the property of appellants and it passes through

the properties of others also and new branches were constructed from the originally formed road and plaint A and B schedule properties form part of a public road constructed 30 years ago and the road is vested in the Panchayat and appellants are not entitled to the decree sought for.

3. Learned Munsiff on the evidence of PWs.1, DWs.1 and 2 and Exts.A1 to A13, B1 and B2,C1, C2(a) granted a decree in favour of appellants finding that there is no evidence to prove that it is a public road or that the property was acquired or dedicated. First respondent panchayat challenged that judgment before Sub Court, Thodupuzha in A.S.15/2004. The other respondents excluding fifth respondent filed A.S.14/2004. Learned Sub Judge on appreciation of evidence, set aside the finding of learned Munsiff and dismissed the suit. It is challenged in the second appeal.

4. Learned counsel appearing for appellants was heard.

5. The argument of the learned counsel is that

first appellate court was not justified in reversing the judgment of the trial court on the fact and evidence on record. It was argued that Ext.A1 will is more than 60 years old and the title of appellants to the plaint schedule properties in such circumstance was not disputed at all and the only case was that the road was formed after portion of the property belonging to the appellants were surrendered for the purpose of forming the road and there is no evidence to prove any surrender and there is also no case of any acquisition and in such circumstance as title of the appellants over the property through which the road is passing is not disputed, first appellate court should not have interfered with the decree.

6. On hearing the learned counsel I do not find any substantial question of law involved in the appeal.

7. The suit is only with regard to a portion of the road which passes through the property of appellants. Even in the suit appellants did not

seek any relief against the public from using that road and public was not impleaded also. Case of the appellants is that they have title to the road as land was never acquired and appellants did not surrender any portion of their property for the formation of the road and road was formed by them though they permitted the neighbours to pass through the road. Case of respondents is that the road which is a continuation of the public road which connects Malankara Thalayanadu Panchayat road and that road was formed after owners of the respective properties through which the road was formed, surrendered portions of their property for that purpose and the public road was formed. In the nature and circumstances of the case, attempt of appellants is to get a decision on the title of road. But appellants did not pay court fee as provided under section 27(a) of Kerala Court Fees and Suit Valuation Act. Instead suit was filed paying a court fee under section 27(c) only based on the possession. But evidence establish that road starts from the Malankara Thalayanadu

Panchayat road and proceeds further through the properties of neighbouring owners. Even appellant at the time of his evidence admitted that the neighbouring owners had surrendered portions of their property for the purpose of formation of the road. In such circumstance, appellant is not entitled to get a decree for injunction without getting a declaration of title to the property. For that sole reason, appeal is to be dismissed. There is no substantial question of law involved in the appeal. The dismissal of the appeal will not disentitle appellants from seeking relief on the strength of their title. Eventhough appellate court had considered the question of title, on the facts of the case that question does not arise. Appellants are entitled to agitate their claim on title to the property in a properly instituting suit.

Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

Tpl/-